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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAVON LAMAR TORBERT,
12 CDCR #P-96193,

13 Plaintiff,

Civil No. 11cv2953 DMS (WMc)

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

14
15 vs.

16 COUNTY OF SAN DIEGO, *et al.*,

17 Defendants.

18 Plaintiff Javon Lamar Torbert, a state prisoner proceeding *pro se*, filed a complaint under 42
19 U.S.C. Section 1983 alleging use of excessive force and deliberate indifference to a serious medical
20 need. The action was referred to United States Magistrate William McCurine, Jr. for a report and
21 recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.1(d).

22 Because Plaintiff failed timely to serve Defendant Keays pursuant to Federal Rule of Civil
23 Procedure 4(m) after extensions of time had been granted, the Magistrate Judge issued a report and
24 recommendation on June 28, 2013 recommending to dismiss without prejudice the claims asserted
25 against Dr. Keays. Petitioner has not objected to the report and recommendation.

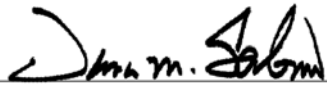
26 A district judge "may accept, reject, or modify the recommended disposition" on a dispositive
27 matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.
28 Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of

1 those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1).
2 When no objections are filed, the *de novo* review is waived. Section 636(b)(1) does not require review
3 by the district court under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). The "statute
4 makes it clear that the district judge must review the magistrate judge's findings and recommendations
5 *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
6 (9th Cir. 2003) (*en banc*) (emphasis in the original).

7 In the absence of objections, the Court adopts the Report and Recommendation. For the reasons
8 stated therein, all claims asserted against Defendant Keays are dismissed without prejudice.

9 **IT IS SO ORDERED.**

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11 DATED: August 6, 2013

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14 HON. DANA M. SABRAW
15 United States District Judge
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